

Plaintiff, State of Wyoming (“Wyoming”), by and through the Wyoming Attorney General, brings this complaint pursuant to the Administrative Procedure Act (“APA”) seeking declaratory and injunctive relief against Defendants United States Department of the Interior (“Interior”), Gale Norton in her official capacity, and Steven Williams in his official capacity (collectively referred to as “Defendants”). In support of this Complaint, Wyoming alleges as follows:

INTRODUCTION

1. The gray wolf population in Wyoming and the rest of the northern Rocky Mountain region has recovered and no longer should be protected under the Endangered Species Act (“ESA”). Before the gray wolf can be delisted, the ESA requires that Idaho, Montana, and Wyoming have adequate regulatory mechanisms in place to provide for the management of wolves after delisting. To satisfy this legal requirement, Wyoming enacted WYO. STAT. ANN. § 23-1-304 and adopted a gray wolf management plan (“Wyoming Plan”) to provide for state management of wolves in Wyoming after delisting.

2. Under the APA, a court shall “compel agency action unlawfully withheld or unreasonably delayed . . . and hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law . . .” 5 U.S.C. § 706. Defendants have unlawfully withheld their approval of the Wyoming Plan and have thereby acted in an arbitrary, capricious manner. Defendants’ rejection of the Wyoming Plan unlawfully violates the APA and the ESA.

3. The ESA requires Secretary Norton and Director Williams to evaluate the adequacy of the Wyoming Plan solely upon the best scientific and commercial data available. The best scientific and commercial data available confirms that WYO. STAT. ANN. § 23-1-304 and the Wyoming Plan provide an adequate regulatory mechanism to protect and preserve the northern Rocky Mountain gray wolf population at or above population recovery goals for the foreseeable future. Ignoring the unambiguous “best science” mandate in the ESA, Secretary Norton and Director Williams arbitrarily, capriciously, and illegally rejected the Wyoming Plan based upon political considerations, fear of lawsuits by environmental organizations, and speculation regarding Montana and Idaho adopting plans similar to the Wyoming Plan.

4. Secretary Norton and Director Williams will not approve the Wyoming Plan and will not propose a rule to delist the gray wolf until Wyoming changes WYO. STAT. ANN. § 23-1-304 and the Wyoming Plan: (i) to eliminate the “predator” classification for the gray wolf; (ii) to unambiguously commit to managing for a minimum of fifteen wolf packs in Wyoming; and (iii) to redefine the term “pack.” The provisions of WYO. STAT. ANN. § 23-1-304 and the Wyoming Plan do unambiguously commit to managing for a minimum of fifteen wolf packs in Wyoming. The decision to reject the Wyoming Plan and to not propose a rule to delist the gray wolf until Wyoming makes the requested changes is final agency action. Wyoming brings this civil action to compel the United States Department of the Interior, Secretary Norton, and Director Williams to act to approve the Wyoming Plan as written, and to proceed with the delisting process for the gray wolf without further delay as required by the ESA.

5. The gray wolf population has exceeded recovery goals. Despite this fact, the United States Fish and Wildlife Service (“FWS”) has demanded that the Wyoming Legislature adopt a wolf regulatory plan that complies with the FWS’s specific edicts. The FWS interpretation and application of the ESA is nothing less than an attempt to commandeer the Wyoming Legislature into federal regulatory service. Because FWS’s interpretation and application of the ESA far exceeds any power granted to the FWS pursuant to the Commerce Clause and specifically violates rights granted to Wyoming under the Tenth Amendment and Guarantee Clause of the United States Constitution, the court must declare that the U.S. Constitution prohibits the FWS from imposing its will upon the Wyoming Legislature and declare that the FWS mandate to Wyoming is unconstitutional. The FWS must be enjoined from continuing this unlawful action and be enjoined from any further delay in delisting the gray wolf.

JURISDICTION

6. This action arises under the APA, 5 U.S.C. §§ 701-706.¹ This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 (federal question), 28 U.S.C. § 1346(a)(2) (United States as a defendant), 28 U.S.C. §§ 2201-2202 (declaratory judgments), and 5 U.S.C. §§ 702-706 (APA right of review).

¹ This action seeks relief exclusively under the APA. In addition, Wyoming plans to amend this Complaint with counts under the ESA pursuant to ESA § 11(g), 16 U.S.C. § 1540(g). Wyoming has provided notice to Defendants of its intent to amend this Complaint under the ESA. Once the appropriate notice period has passed pursuant to 16 U.S.C. § 1540(g), Wyoming intends to file its motion to amend this Complaint to include these causes of action under the ESA.

VENUE

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(2), as a substantial part of the events or omissions giving rise to this civil action occurred in this judicial district. The decision to reject the Wyoming Plan dramatically affects Wyoming's sovereignty, hinders Wyoming's ability to manage Wyoming's wildlife resources, and affects the economy of Wyoming and the State's revenue collections. The denial of Wyoming's Plan to manage the exploding population of gray wolves will have the greatest impact on Wyoming. Venue also is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(3).

PARTIES

8. Plaintiff State of Wyoming is a sovereign state. Wyoming brings this litigation on its own behalf.

9. Defendant United States Department of the Interior is an executive branch agency of the United States of America. The Department of Interior is the federal agency responsible for administering the ESA throughout the United States.

10. Defendant Gale Norton is the Secretary of the United States Department of the Interior. Secretary Norton has the statutory duty to administer the ESA throughout the United States. Her duties as the administrator of the ESA include making determinations as to whether protected species such as the gray wolf should be delisted in accordance with the ESA. Secretary Norton is sued in her official capacity.

11. Defendant Steven Williams is the Director of the United States Fish and Wildlife Service. Secretary Norton has delegated her responsibility for implementing the ESA to Director Williams. Director Williams' duties include reviewing and approving decisions as to whether protected species such as the gray wolf should be delisted in accordance with the ESA. Director Williams is sued in his official capacity.

FACTS COMMON TO ALL CAUSES OF ACTION

Species Profile of the Gray Wolf

12. The gray wolf (*Canis lupus*) is the largest member of the dog family *Canidae*. Gray wolves form family groups referred to as "packs." In 2001, the average size of a gray wolf pack in Wyoming outside of Yellowstone National Park ("Yellowstone Park") was approximately nine wolves, and the average size of a gray wolf pack in Yellowstone Park was approximately thirteen wolves.

13. Gray wolves have high reproductive potential. The size of a gray wolf population which is not subjected to human-caused mortality may increase at a rate of 28 percent to 35 percent annually. Since 1998, the gray wolf population in Wyoming has increased by an average of 22 percent per year.

14. Gray wolves are highly efficient predators that feed primarily on large ungulates. In and adjacent to Yellowstone Park, 85 percent of documented gray wolf kills are elk (*Cervus elaphus*), followed by bison (*Bison bison*), moose (*Alces alces*), deer (*O. hemionus*), and

pronghorn antelope (*Antilocapra americana*). Gray wolves also kill livestock and other domestic animals such as dogs and horses.

Protection of the Gray Wolf Under the ESA

15. In 1973, the FWS listed the gray wolf as an endangered species under the ESA.

16. In 1982, Congress added Section 10(j) to the ESA, 16 U.S.C. § 1539(j), to allow for the introduction of listed species into their historic range. Section 10(j) authorizes the Secretary to designate a listed species which has been introduced outside of its current range, but within its historic range, as “experimental.” The experimental designation increases the FWS’s flexibility in managing the introduced listed species because experimental animals may be treated in the same manner as threatened species under the ESA.

17. Section 10(j) also permits the Secretary to designate a listed species which has been introduced outside of its current range, but within its historic range, as “non-essential.” The non-essential designation increases the FWS’s management flexibility because non-essential experimental populations located outside of national wildlife refuges or national park lands are treated for purposes of Section 7 of the ESA as if the species were only proposed for listing.

18. Section 10(j) also gives the Secretary authority to promulgate special regulations (“Section 10(j) rules”) to further promote the conservation of the experimental population.

The Reintroduction of the Gray Wolf in Wyoming

19. In 1980, the FWS developed a plan to recover the gray wolf in the area around Yellowstone Park north to the Canadian border, including central Idaho (the “northern Rocky Mountain recovery area”).

20. In 1987, the FWS approved a revised gray wolf recovery plan. The 1987 Recovery Plan established three recovery areas (northwestern Montana, central Idaho, and Yellowstone) and recommended that once the Rocky Mountain wolf population was recovered, that three management zones be created within each recovery area.

21. In 1990, a congressionally-mandated Wolf Management Committee consisting of three federal, three state, and four interest group representatives, developed a plan for wolf restoration in Yellowstone and central Idaho. The Wolf Management Committee recommended that Congress issue a declaration directing the reintroduction of wolves into Yellowstone Park, and possibly central Idaho, as special experimental, non-essential populations to be managed by the states with federal funding. Congress took no action on the Wolf Management Committee recommendation.

22. In 1991, Congress directed the FWS to prepare an environmental impact statement (“EIS”) with respect to gray wolf introduction to Yellowstone Park and central Idaho. Congress subsequently directed the FWS to complete the EIS by January 1994.

23. The FWS filed the final EIS on gray wolf introduction on May 4, 1994. The FWS’s proposed action was to introduce gray wolves as an experimental, non-essential

population in Yellowstone Park and central Idaho. The EIS Record of Decision was signed on June 15, 1994.

24. In November 1994, Interior issued a final rule which authorized the introduction of experimental, non-essential gray wolf populations into Yellowstone Park and into central Idaho. The final rule established the Greater Yellowstone Recovery Area for the gray wolves introduced into Yellowstone Park. The Greater Yellowstone Recovery Area consists of that portion of Idaho east of Interstate Highway 15; that portion of Montana that is east of Interstate Highway 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming.

25. Interior promulgated Section 10(j) rules, 50 C.F.R. § 17.84(i), to govern the management of gray wolves in Wyoming and the rest of the northern Rocky Mountain recovery area.

26. The Section 10(j) rules for the gray wolf require the FWS to control wolves that attack livestock by various means, including aversive conditioning, non-lethal control, moving wolves, placing wolves in captivity, or killing wolves.

27. The Section 10(j) rules for the gray wolf (50 C.F.R. § 17.84(i)) require the FWS to control wolves that are negatively impacting ungulate populations by moving the wolves to other locations within the experimental population area. The Section 10(j) rules do not permit the FWS to deliberately kill wolves solely to address ungulate-wolf conflicts.

28. In January 1995, the FWS released fourteen western Canadian gray wolves into Yellowstone Park. One year later, the FWS released an additional seventeen western Canadian gray wolves into Yellowstone Park.

29. Since their introduction into Yellowstone Park in January 1995, gray wolves have dispersed into Wyoming from Yellowstone Park. Gray wolves have been sighted as far south as Wamsutter, Wyoming, and as far east as the Big Horn mountain range.

Recovery of the Gray Wolf in Wyoming and the Northern Rocky Mountains

30. The FWS recovery criteria specify that the gray wolf population in the northern Rocky Mountain recovery area will be recovered for purposes of the ESA when at least 30 breeding pairs, comprising at least 300 wolves, exist in the northern Rocky Mountain recovery area for a minimum of 3 years.

31. In 2000, according to the FWS, the northern Rocky Mountain gray wolf population consisted of 433 wolves, including 30 breeding pairs. By the end of 2000, at least 119 wolves in eight packs were living in Yellowstone Park and approximately 36 wolves in six packs were living in Wyoming outside of the borders of Yellowstone Park.

32. In 2001, the northern Rocky Mountain gray wolf population consisted of at least 563 wolves, including 34 breeding pairs. By the end of 2001, the FWS estimated there were 131 wolves in ten packs living in Yellowstone Park and at least 56 wolves in eight packs living in Wyoming outside of Yellowstone Park.

33. In 2002, the northern Rocky Mountain gray wolf population consisted of a minimum of 663 wolves, including 43 breeding pairs. By the end of 2002, there were at least 148 wolves in fourteen packs living in the Yellowstone Park and 67 to 81 wolves in eight packs living in Wyoming outside of Yellowstone Park.

34. In 2003, the estimated northern Rocky Mountain gray wolf population consisted of a minimum of 761 wolves, including 51 breeding pairs. By the end of 2003, there were at least 174 wolves in 14 packs living in Yellowstone Park and 76 to 88 wolves in 8 packs living in Wyoming outside of Yellowstone Park.

35. These and other FWS estimates likely underestimate the wolf population since they are based upon known packs. Packs are monitored by means of one or more radio collared wolves in the pack. Because the FWS has not always collared a wolf in each pack, the FWS does not know the actual wolf population.

36. The FWS has recently restricted the FWS wolf collaring program based on concerns that FWS personnel were trespassing on private land to collar wolves. The restriction or abandonment of this program will make future FWS wolf population estimates even more suspect than present estimates.

37. The three initially isolated gray wolf populations in northwestern Montana, central Idaho, and the Greater Yellowstone recovery area have expanded in range and increased in numbers to the point where they are no longer isolated from each other. The gray wolf

populations in northwestern Montana, central Idaho, and the Greater Yellowstone recovery area are now functioning as a single large population rather than as three isolated populations.

38. In 2003, the FWS determined that the gray wolf had recovered in the northern Rocky Mountain recovery area and announced that delisting could proceed as soon as Idaho, Montana, and Wyoming each developed wolf management plans to ensure that adequate existing regulatory mechanisms would be in place when the gray wolf was delisted.

Gray Wolf Predation in Wyoming

39. In developing its wolf reintroduction program, the FWS recognized that the reintroduced wolves would come into contact with livestock production and other human activities. From the outset of the program, the federal government assured ranchers that the FWS would control the wolves in order to limit the harm to landowners. In its EIS, FWS explained that the “overriding goal of the wolf control program” is to minimize wolf depredation on livestock. FWS recognized that a “responsive program to address conflicts between wolves and domestic livestock reduces the degree of livestock depredation by wolves.”

40. In the preamble to the regulations, and in response to requests for a livestock damage compensation fund, the government also committed that “the [FWS] and [U.S. Department of Agriculture’s] Animal Damage Control [since renamed “Wildlife Services”] will aid livestock producers by maintaining an effective control program that minimizes livestock losses due to wolves.” 59 Fed. Reg. 60,260 (Nov. 22, 1994). FWS claimed that its regulatory program “address[ed] the concerns of private property owners by . . . providing an effective

control program.” *Id.* The government contended that, under its program, “[w]olves that depredate on livestock are translocated or removed.” *Id.*

41. The federal government also adopted a policy for controlling wolves that explicitly mandates removal of so-called problem wolves. The regulations authorize the removal of wolves after a single attack by that wolf on livestock once there are six or more breeding pairs in the experimental population. 50 C.F.R. § 17.84(i)(3)(vii).

42. Despite the formal declaration of a policy of preventing and responding to wolf depredation, the federal government has repeatedly neglected to fulfill its commitment to Wyoming residents. Wolves have killed a very large number of livestock in many parts of the state to the detriment of Wyoming residents and directly to the detriment of the State. Wolf predation of livestock causes income loss for Wyoming residents, which then results in a loss of expenditure within the Wyoming economy and a corresponding loss of sales tax income for Wyoming.

43. In 1987, Defenders of Wildlife established a fund to compensate livestock producers for losses caused by wolves. Before January 1996, Defenders of Wildlife did not compensate a single rancher for loss of livestock due to wolf predation in the Greater Yellowstone Area.

44. From January 1996 through January 2004, Defenders of Wildlife compensated livestock producers for 366 cattle and 984 sheep lost to wolf predations. Of these payments for

cattle lost to wolf predations, 84 percent of lost cattle were in the Rocky Mountains. All of the payments for sheep lost to wolf predations were for sheep in the Rocky Mountains.

45. The number of livestock losses attributed to wolves is significantly understated. In past years, Defenders of Wildlife declined to provide compensation except in circumstances where FWS “confirmed” a wolf kill. For FWS to confirm that a wolf in fact killed the livestock at issue, FWS required, in many instances, absolute certainty. FWS declined to confirm wolf kills in some circumstances where government personnel had indicated that they were “90 percent” or even “95 percent” certain that a wolf had killed the animal. Requiring proof of loss to such a very high degree of certainty has rendered it impossible for Wyoming ranchers to document their losses to the satisfaction of FWS and, consequently, the Defenders of Wildlife do not pay for the losses.

46. Because ranches in Wyoming can be very large, and livestock often is scattered over a vast area, ranchers frequently do not find carcasses from wolf kills, if at all, until well after evidence of the cause of death is available. Ranchers are therefore unable to demonstrate, to the degree demanded by FWS, that wolves killed the animals at issue. As a consequence, FWS statistics grossly understate the number of cattle and sheep wolves have killed.

47. Experts, including FWS personnel, readily acknowledge that the number of cattle lost to wolves is greater than what is reported in available statistics. Moreover, wildlife biologists generally acknowledge that statistics requiring so high a degree of proof yield misleadingly low estimates of depredation.

48. Employing these minimal statistics, 120 cattle, or 33 percent of all the cattle lost to wolf predation, were lost to wolves in the Greater Yellowstone recovery area. Fifty-seven percent of all the sheep lost to wolf predations were lost to wolves in the Greater Yellowstone recovery area.

49. From 1999 through 2002, reportedly there have been 295 sheep confirmed lost to wolf predations within Wyoming. From 1999 through 2002, there have been 112 cattle confirmed lost to wolf predations within Wyoming. In addition, there have been 34 herding dogs and two horses confirmed lost to wolf predations during that same time frame.

50. The mortality wolves inflict on ungulates such as moose, elk, deer, antelope, and bighorn sheep is difficult to quantify because wildlife populations are not monitored as efficiently as domestic livestock herds, and there is no program to compensate Wyoming, Idaho, or Montana for wildlife losses.

51. Wolf predation has caused a decrease in elk and moose herds in Wyoming. Calf-cow ratios and populations for both elk and moose in Wyoming have declined significantly where wolves have become established. Cow-calf ratios in elk herds not in close proximity to substantial wolf populations have maintained pre-wolf reintroduction levels, while cow-calf ratios in elk herds near Yellowstone National Park have decreased by up to 26 percent since the reintroduction of the gray wolf to Wyoming.

52. At the current population level in the areas immediately adjacent to Yellowstone National Park, wolves currently kill approximately 1,500 elk, 330 mule deer, and 30 moose per year in Wyoming outside of the National Parks.

53. Wolf predation on big game animals in Wyoming near Yellowstone National Park has decreased hunter opportunity in Wyoming by approximately 1,700 hunters per year. The Wyoming Game and Fish Department (“Department”) has been deprived of approximately \$225,000 in license revenues and the Wyoming economy and Wyoming citizens have lost \$2,900,000 in hunter expenditures as a result of the lost hunter opportunities. Wyoming has been deprived of substantial sales tax, lodging tax, and fuel taxes as a result of these lost hunter opportunities.

54. The Wyoming Game and Fish Commission (“Commission”) and the Department operate exclusively on revenue generated as a result of license fees and tax revenue from the Federal Aid in Wildlife Restoration Act (popularly known as the Pittman-Robertson Act). These funding streams, which are entirely separate and not controlled by the Wyoming Legislature and therefore not subject to the vagaries of the political process, allow the Department to fulfill its statutory duties to independently manage wildlife without fear of political influence.

55. The fiscal impact on Wyoming caused by the failure to approve the Wyoming Plan and move forward with delisting is compounded by the fact that Wyoming receives no specific federal funding to address the various negative impacts caused by the exploding wolf

population in Wyoming² and is forced to use hunting license revenues to address and resolve various negative impacts caused by the burgeoning Wyoming wolf population, which, at its current level, is affecting the ability of Wyoming to generate sufficient revenues necessary to manage Wyoming's wildlife resources.

56. The elimination or significant reduction in the sources of revenue, which is the direct result of the FWS's unlawful refusal to approve the Wyoming Plan, causes an irreparable harm to Wyoming's sovereignty. Wyoming's ability to exercise its authority as a sovereign state in managing Wyoming's wildlife, both game and non-game species, is eroded by the unlawful withholding of agency action by the FWS.

57. By unlawfully withholding agency action, the FWS is not only compelling Wyoming to forego revenue that could be used by Wyoming to manage game and non-game species, but also is compelling Wyoming to use other resources to address negative wolf impacts. These two results, caused by the FWS's unlawful withholding of agency action, cause an immediate and irreparable harm to Wyoming's sovereignty.

² The Commission has been forced to allocate resources to numerous species either listed or proposed for listing under the ESA such as wolves, grizzly bears, Preble's jumping mice, black footed ferrets, prairie dogs, and others. The allocation of these resources which are primarily funded out of hunting license revenues and without the receipt of federal appropriations to comply with the federal mandate, is severely affecting the Commission's ability to maintain sufficient revenue to independently manage all of Wyoming's wildlife resources.

The Legal Requirements for Delisting the Gray Wolf

58. Secretary Norton's decision whether to delist a species must be based upon the best scientific and commercial data available.

59. A species may be delisted on the basis of recovery if the best scientific and commercial data available indicate that protection under the ESA is no longer required because the species is no longer threatened or endangered.

60. Secretary Norton considers the following factors in delisting a species: (a) the present or threatened destruction, modification, or curtailment of its habitat or range; (b) overutilization for commercial, recreational, scientific or educational purposes; (c) disease or predation; (d) the inadequacy of existing regulatory mechanisms; and (e) other natural or manmade factors affecting the species' continued existence.

61. In 1982, Congress amended Section 4(b) of the ESA, 16 U.S.C. § 1533(b) to require Secretary Norton to base her determinations regarding the listing or delisting of a species "solely" on the basis of the best scientific and commercial data available. Congress added the term "solely" to 16 U.S.C. § 1533(b) to remove from the process of listing or delisting a species any factor not related to the biological status of the species. In making a determination regarding the delisting of a species, the Secretary shall consider only biological information or trade data in evaluating whether the five delisting factors have been satisfied.

62. In conjunction with the introduction of gray wolves into Yellowstone Park in 1995, the FWS committed that the northern Rocky Mountain wolf population would be

considered for delisting when the population met or exceeded recovery goals, and after Idaho, Montana, and Wyoming each had developed a wolf management plan that adequately protected the wolf population to assure the gray wolf would not become threatened or endangered again.

Wyoming Statutes Governing Gray Wolf Management

63. Since at least 1939, wolves have been listed as a “predatory animal” pursuant to Wyoming law. Wyoming law lists an animal as a predatory animal if such animal can have a detrimental impact on Wyoming’s economy. Jackrabbits, porcupines, skunks, and stray cats are also considered predatory animals pursuant to Wyoming law.

64. In 2003, the Wyoming Legislature enacted WYO. STAT. ANN. § 23-1-304 to provide for the management of gray wolves in Wyoming upon delisting.

65. Section 23-1-304 provides that, upon delisting, the Department shall manage at least fifteen wolf packs in Wyoming as a whole and at least seven wolf packs living outside of the National Parks.

66. Section 23-1-304 provides that, upon delisting, gray wolves shall be classified as “trophy game animals” in the National Parks and those federally designated wilderness areas contiguous to the National Parks. Gray wolves will be classified as predatory animals in all other areas of Wyoming.

67. Section 23-1-304 provides that, if there are less than seven wolf packs located in Wyoming and primarily outside of the National Parks, the Commission shall adopt rules and regulations to classify the gray wolf as a trophy game animal within that area of Wyoming the

Commission determines is necessary to reasonably ensure that seven wolf packs are located in Wyoming and primarily outside of the National Parks.

68. For purposes of WYO. STAT. ANN. § 23-1-304, the term “pack” means five or more gray wolves traveling together.

The Wyoming Gray Wolf Management Plan

69. In anticipation of the recovery of the gray wolf population, the Department drafted the Wyoming Plan after extensive consultation with the FWS.

70. In June 2003, the Department asked the FWS to provide comments on the June 2003 draft version of the Wyoming Plan. On July 2, 2003, Ed Bangs, the Wolf Recovery Coordinator for the FWS, responded to this request on behalf of the FWS. The written response from Mr. Bangs was reviewed and approved by the FWS Regional Office Upper Level Managers.

71. In his response, Mr. Bangs stated that “Wyoming should commit to maintaining fifteen or more packs in Wyoming, so if wolf numbers in the Parks drop below eight packs, Wyoming will have more than seven packs outside of the Parks. The plan currently recognizes and provides for this.”

72. With respect to the dual status of wolves as “predatory animals” and “trophy game animals” under the Wyoming Plan, Mr. Bangs stated that the FWS believes that the dual status classification “was a very serious mistake that will continue to haunt our efforts to successfully delist wolves. Predatory animal status for wolves will make the whole delisting

process much more contentious, emotional, expensive, and filled with hurtful rhetoric than necessary.”

73. Mr. Bangs elaborated on the FWS’s position on the dual status of the wolf, stating that

[w]olf restoration in Montana, Idaho, and Wyoming, particularly in and near Yellowstone National Park, is widely perceived as one of the most successful wildlife conservation efforts of this century. We believe that the image that under predatory animal status in Wyoming, wolves could be killed without a clear regulatory safety-net, at any time, without limit, and particularly by any means-is unacceptable to most Americans. We believe those perceptions will cause unimaginable rhetoric, conflict, emotion and mistrust. It could raise millions of dollars and provide a unifying justification for those groups who have most strongly supported wolf restoration, share animal fairness and humane concerns, but mistrust any type of state management-ie. the very organizations that are most likely to litigate over wolf delisting. While the Service is mandated to focus on science and biology, public attitudes and comments will influence subsequent litigation. We urge you to reconsider the wisdom of “predatory animal”status for wolves anywhere in Wyoming. The Wyoming legislature could help avoid a huge and very public brawl that will be damaging, if not fatal, to the Service’s efforts to delist a recovered wolf population and would greatly improve the national public’s attitude and trust of Wyoming’s abilities to manage wolves, by authorizing wolf trophy game status statewide.

74. In July 2003, the Commission adopted the final version of the Wyoming Plan. The final Wyoming Plan incorporates the gray wolf management objectives set forth in WYO. STAT. § 23-1-304.

75. The final Wyoming Plan provides that, upon delisting of the gray wolf, the Department will maintain and manage at least fifteen wolf packs within the State of Wyoming, including Yellowstone National Park, Grand Teton National Park, and the John D. Rockefeller, Jr., Memorial Parkway (collectively referred to as “the National Parks”). The Department will manage wolves to maintain seven of the fifteen packs outside of the National Parks.

76. The final Wyoming Plan defines “pack” as five or more gray wolves traveling together.

77. The final Wyoming Plan acknowledges that the Department has no legal authority to actively manage wolves within the National Parks. Upon delisting, wolves will not be subject to public take within the National Parks. The National Parks encompass an area of 3,945 square miles (2,524,800 acres) in Wyoming.

78. The Department will manage wolves under a dual classification of “trophy game animal” and “predatory animal.”

79. Initially, wolves will be classified as “trophy game animals” in the wilderness areas contiguous to the National Parks (Absaroka-Beartooth, North Absaroka, Washakie, Teton, Jeddediah Smith, Winegar Hole, and Gros Ventre). These wilderness areas encompass a total area of 3,193 square miles (2,043,520 acres). Wolves located in Wyoming, but outside of the National Parks and the contiguous wilderness areas, will initially be classified as “predatory animals.”

80. As a “trophy game animal,” the Department will regulate the take of gray wolves to achieve population goals by issuing hunting permits and by establishing hunting areas and seasons for gray wolves.

81. If the number of wolf packs falls to seven or less outside of the National Parks, the Commission will immediately promulgate a rule to classify the gray wolf as a “trophy game animal” in a geographic area known as the Northwest Wyoming Wolf Data Analysis Unit (“Wolf DAU”). Wolves living in Wyoming outside of the Wolf DAU will be classified as “predatory animals.”

82. The Commission and the Department regularly set hunting seasons, bag limits, and other limitations on hunting in Wyoming by the rulemaking process. In addition, the Commission has routinely used its emergency rulemaking powers to enact immediate regulations to maintain the status quo in regard to wildlife management issues until a final rule can be put in place. An emergency situation routinely results in the Commission enacting an emergency rule which takes effect immediately and is usually followed by the enactment of a final rule in approximately 120 days. The rulemaking authority of the Commission will allow Wyoming to respond very quickly to any threat to the sustainability of the gray wolf population.

83. The Wolf DAU initially will encompass an area of 9,780 square miles (6,259,200 acres). The Wolf DAU will include the National Parks, the wilderness areas contiguous to the National Parks (Absaroka-Beartooth, North Absaroka, Washakie, Teton, Jedediah Smith,

Winegar Hole, and Gros Ventre), and 2,642 square miles of land in Wyoming surrounding the National Parks and the contiguous wilderness areas.

84. The Wolf DAU will consist of three wolf management units (or hunt areas). The Department will manage for seven wolf packs within the Wolf DAU, and will use the wolf management units to regulate public take to achieve specific harvest objectives and insure recovery objectives of the wolf population

85. The Wolf DAU/wolf management unit method for managing wolves is the same as the data analysis unit/hunt area method the Department uses to manage all other species of big game and trophy game animals.

86. The Department will actively monitor wolf populations and collect appropriate management data on wolves throughout Wyoming, including those areas where wolves are classified as “predatory animals.” At least every 90 days, the Department shall provide the Commission with a monitoring report on the number of wolf packs within Wyoming and their general location. The Department can also provide this report in less than 90 days if needed.

87. Based upon the monitoring report provided by the Department, the Commission will review the classification of wolves in the Wolf DAU to determine whether the boundaries of the Wolf DAU should be adjusted to maintain wolf pack management objectives.

88. The Commission will increase or decrease the geographic size of the Wolf DAU as needed to ensure that adequate regulatory mechanisms are in place to maintain seven wolf packs outside the National Parks. As the geographic size of the Wolf DAU increases, the area in

which wolves are classified as “trophy game animals” increases and the area in which wolves are classified as “predatory animals” decreases. An ability to increase the area of Wyoming where wolves are considered trophy game animals allows the Commission to insure the sustainability of the wolf population.

Review of the Final Wyoming Plan by the FWS

89. In September 2003, Wyoming submitted its gray wolf management plan to the FWS for review. In October 2003, the FWS selected twelve recognized authorities in wolf management or research to provide peer reviews of the Idaho, Montana, and Wyoming wolf management plans. Each of the selected peer review experts has fifteen to thirty-five years of experience with wolves, large predator/prey or livestock depredation issues.

90. The FWS asked each of the peer review experts to provide their individual review and opinion of whether the wolf management plans submitted by Idaho, Montana, and Wyoming would achieve the stated objectives of each plan respectively, and if collectively the plans will maintain, at a minimum, the northern Rocky Mountain recovery area wolf population at recovery levels into the foreseeable future.

91. Eleven of the twelve peer review experts submitted critiques to the FWS. In late November 2003, Director Williams sent the peer review critiques to the Department and asked the Department to submit written comments on the peer review results.

92. Ten of the eleven peer review experts determined that the Wyoming Plan will, collectively with the Idaho and Montana plans, maintain the recovery goal population numbers in the northern Rocky Mountain recovery area.

93. The findings of the peer review experts constitute the best scientific and commercial data available for evaluating the adequacy of the Wyoming Plan.

94. After receiving the peer review critiques and comments from Wyoming, the FWS reviewed the Wyoming Plan in light of the critiques and comments. In mid-January 2004, the FWS accepted the Idaho and Montana wolf management plans, but rejected the Wyoming Plan.

95. Director Williams informed the Department that the FWS would approve the Wyoming Plan if the following three changes were made: (i) eliminate the “predatory animal” status and classify the gray wolf as a “trophy game animal” only; (ii) amend WYO. STAT. ANN. § 23-1-304 so that the statutory language unambiguously commits to managing for at least fifteen wolf packs in Wyoming; and (iii) Wyoming’s definition of the term “pack” must be biologically based, consistent with the definitions in Idaho and Montana state plans, and, if the pack size must be established by law, the state law must define pack size as at least six wolves traveling together in the winter.

96. In the news release announcing the FWS’s rejection of the Wyoming Plan, Director Williams stated that “[d]elisting can move forward as soon as Wyoming makes the changes to both its state law and its wolf management plan, but not until then because these wolves are part of one distinct population segment.”

97. On January 15, 2004, Paul Hoffman, the Deputy Assistant Secretary of the Interior for Fish and Wildlife and Parks, appeared before the Joint Travel, Recreation, Wildlife, and Cultural Resources Committee of the Wyoming Legislature to explain the reasons behind the FWS's rejection of the Wyoming Plan. Deputy Assistant Secretary Hoffman testified that the FWS's decision to reject the Wyoming Plan until the requested changes are made:

all hinges on what we believe is our ability to defend a rule to delist wolves if a rule goes final. It is based on our experience in these kinds of matters of litigation in the past. You know, look to the recent past on the snowmobile rule to see what kind of challenges we have in the courtrooms today, and it is - - under the law, the law says make the decisions based on the science, but legal analysis is an appropriate overlay after the scientific analysis is done, and from a strictly science perspective, yes, the plans were deemed adequate. It's the legal considerations that prompt us to say no at this time.

(emphasis added)

Deputy Assistant Secretary Hoffman further testified that:

[o]ur legal analysis was based on litigation risk management principles and consultation with our solicitors; consultation with the secretary herself, who was formerly a solicitor for Fish & Parks and Interior and has a very good understanding of the Endangered Species Act. Assistant Secretary Manson is probably one of the foremost experts on the Endangered Species Act. And our analysis was based on - - it's very much like the high probability of having a breeding pair, what we felt was the highest probability of having a delist rule sustained in a court challenge.

98. With respect to the predatory animal classification in the Wyoming Plan, Deputy Assistant Secretary Hoffman stated that "the predatory animal classification must change. We

recommend trophy game status, but what is most important is that Wyoming have a classification that provides for regulated harvest, harvest that can be adjusted as needed to ensure that Wyoming meets its goals in terms of the number of wolves that we'll manage for."

99. Contrary to Deputy Assistant Secretary Hoffman's testimony, the Wyoming Plan provides the flexibility to protect wolf take anywhere in Wyoming.

100. With respect to the proposed plan for monitoring the number of wolves in Wyoming to determine whether the geographic area for trophy game status should be expanded, Deputy Assistant Secretary Hoffman indicated that the FWS had concerns that the possible expansion or contraction of the geographic area for trophy game status every 90 days would cause confusion for the general public. He further explained that "under a trophy game classification the monitoring will be more affordable and easier for the State of Wyoming to maintain."

101. In explaining how the FWS intended to oversee Wyoming's management of wolves as trophy game animals, Deputy Assistant Secretary Hoffman explained that the FWS did not intend to restrict any trophy-game proposal by Wyoming with regard to season, bag limits, license, fees, or location. In short, so long as it was called a trophy-game animal, the FWS would not object to Wyoming managing wolves as a *de facto* predatory animal.

102. With respect to the peer review critiques of the Wyoming Plan and the predatory animal classification, Deputy Assistant Secretary Hoffman testified as follows:

Let me explain how the legal and the science combine here to cause us anxiety about going forward with the delisting process under the current scenario. People, leaders in Montana and Idaho, have told us on numerous occasions that if the Fish & Wildlife Service goes forward with the process to delist the western DPS of wolves, with Wyoming having a predatory animal classification, there's a very good chance that their legislature may say, 'By golly, we should have done that too, we're going to change our law, we're going to have predator animal classification also.' And there is no doubt from the science perspective that we could not maintain wolves at recovered levels under predatory animal classification in all three states. The peer reviews made it clear that they could - - they could be comfortable with the three state plans taken together based on Yellowstone as a nursery and the strength of the other two states' plans. If those two states had predatory animal classification, I think the result of the peer review would be substantially different.

103. In mid-February 2004, Director Williams appeared before the Travel, Recreation, Wildlife, and Cultural Resources Committee of the Wyoming House of Representatives to again explain the reasons why the FWS rejected the Wyoming Plan until the requested changes are made.

104. Director Williams reiterated that the FWS rejected the Wyoming Plan because their attorneys advised them that a final rule delisting the gray wolf likely would not survive a legal challenge unless the Wyoming Plan was changed.

Final Agency Action

105. The APA authorizes judicial review of "final agency action for which there is no other remedy in a court."

106. For purposes of the APA, an agency action is “final” if the impact of the action is direct and immediate, the action marks the consummation of the agency’s decision-making process, and the action is one by which rights or obligations have been determined or from which legal consequences will flow.

107. Secretary Norton and Director Williams will approve the Wyoming Plan only if Wyoming changes its statutes and the Wyoming Plan to eliminate the “predator” classification for the gray wolf, to unambiguously commit to managing for a minimum of fifteen wolf packs in Wyoming, and to redefine “pack.”

108. Secretary Norton and Director Williams rejected the Wyoming Plan. They have refused to propose a rule to delist the gray wolf unless Wyoming makes the required changes to WYO. STAT. ANN. § 23-1-304 and the Wyoming Plan. The decision to reject the Wyoming Plan marks the consummation of the decision-making process.

109. The decision to reject the Wyoming Plan determined legal obligations for Wyoming.

110. Secretary Norton and Director Williams have unequivocally required Wyoming to make changes to WYO. STAT. ANN. § 23-1-304 and the Wyoming Plan. Any further administrative effort would be futile.

111. The decision to reject the Wyoming Plan and to not propose a rule to delist the gray wolf is “final agency action” for purposes of the APA.

FIRST CAUSE OF ACTION

Injunctive Relief Pursuant to Section 706(1) of the APA

112. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 - 111 as if fully set forth herein.

113. In accordance with 5 U.S.C. § 706(1), a reviewing court shall compel agency action unlawfully withheld or unreasonably delayed. The Defendants' rejection of the Wyoming Plan is unlawful.

114. In accordance with 16 U.S.C. § 1533(c)(2), the Secretary shall consider five factors to determine whether a species should be delisted, including whether the existing regulatory mechanisms for the species are adequate.

115. The ESA requires the Secretary to base her decision on the adequacy of existing regulatory mechanisms solely upon the best scientific and commercial data available.

116. To satisfy the "adequacy of existing regulatory mechanisms" factor for delisting, the FWS required Wyoming to develop a gray wolf management plan for the Department to follow in managing gray wolves in Wyoming upon delisting.

117. The best scientific and commercial data available demonstrates that the Wyoming Plan and WYO. STAT. ANN. § 23-1-304 provide an adequate regulatory mechanism to protect and preserve the gray wolf population at or above recovery goals.

118. The Defendants disregarded the best scientific and commercial data available

regarding the Wyoming Plan and rejected the Wyoming Plan based upon political considerations, fear of litigation by environmental groups, and speculation regarding Montana and Idaho adopting plans similar to the Wyoming Plan.

119. The Defendants will not propose a rule to delist the gray wolf until Wyoming changes its statutes and the Wyoming Plan, even though (i) the gray wolf population in the northern Rocky Mountain region satisfies all of the legal requirements for delisting under the ESA, and (ii) the Wyoming Plan satisfies the “adequate existing regulatory mechanism” requirement for delisting.

120. Unless Wyoming capitulates to the Defendants’ unlawful and unconstitutional political demands, Wyoming’s wildlife resources will continue to be harmed, Wyoming’s economy will continue to be harmed, and Wyoming’s sovereignty will be compromised.

121. The Defendants’ decision to reject the Wyoming Plan is “final agency action” subject to judicial review under the APA. Under the current state of affairs, wolf delisting will never occur and the gray wolf population will continue to be unregulated in Wyoming.

122. By rejecting the Wyoming Plan in violation of the ESA and by refusing to propose a rule to delist the gray wolf, the Defendants have unreasonably delayed or unlawfully withheld agency action within the meaning of 5 U.S.C. § 706(1). Wyoming is entitled to an injunction ordering the Defendants to immediately approve the Wyoming Plan and to proceed forthwith to propose a rule to delist the gray wolf in the Western Distinct Population Segment.

SECOND CAUSE OF ACTION

Injunctive Relief Pursuant to Section 706(1) of the APA

123. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 - 122 as if fully set forth herein.

124. The Section 10(j) rules for the gray wolf, 50 C.F.R. § 17.84(i), require the FWS to control wolves that attack livestock by various means, including aversive conditioning, non-lethal control, moving wolves, placing wolves in captivity, or killing wolves.

125. The federal government's formal commitments and the Section 10(j) rules for the gray wolf, 50 C.F.R. § 17.84(i), require the FWS to control wolves that are severely harming ungulate populations by moving the wolves to other locations within the experimental population area.

126. Gray wolves in Wyoming are killing significant numbers of livestock and wildlife, and the Defendants have not taken adequate steps to control this depredation by wolves in Wyoming as required by 50 C.F.R. § 17.84(i).

127. The Defendants have neglected to fulfill their commitments or abide by their own regulations that mandate control of depredating wolves. The Defendants have exclusive authority to control depredating wolves and have failed to properly manage wolves in Wyoming pursuant to their own regulations. By failing to properly manage the gray wolf population in Wyoming in accordance with 50 C.F.R. § 17.84(i), the Defendants have unreasonably delayed or unlawfully withheld agency action within the meaning of 5 U.S.C. § 706(1). Wyoming is

entitled to an injunction ordering the Defendants to control wolf depredation of livestock and wildlife in Wyoming in accordance with the requirements of 50 C.F.R. § 17.84(i) until such time as the Commission assumes management authority over gray wolves in Wyoming.

THIRD CAUSE OF ACTION

Injunctive Relief Pursuant to Section 706(2) of the APA

128. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 - 127 as if fully set forth herein.

129. In accordance with 5 U.S.C. § 706(2), a reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

130. In accordance with 16 U.S.C. § 1533(c)(2), the Secretary must consider five factors to determine whether a species should be delisted, including whether the existing regulatory mechanisms for the species are adequate.

131. The ESA requires the Secretary to base her decision on the adequacy of existing regulatory mechanisms solely upon the best scientific and commercial data available.

132. To satisfy the “adequacy of existing regulatory mechanisms” factor for delisting, the Defendants required Wyoming to develop a gray wolf management plan for the Department to follow in managing gray wolves in Wyoming upon delisting.

133. The best scientific and commercial data available demonstrates that the Wyoming

Plan and WYO. STAT. ANN. § 23-1-304 provide an adequate regulatory mechanism to protect and preserve the gray wolf population at or above recovery goals.

134. The Defendants ignored the best scientific and commercial data available in their review of the Wyoming Plan and rejected the Wyoming Plan based upon political considerations, fear of litigation by environmental groups, and speculation regarding Montana and Idaho adopting plans similar to the Wyoming Plan.

135. The Defendants claim to have rejected the Wyoming Plan, in part, because WYO. STAT. ANN. § 23-1-304 does not unambiguously commit to managing for at least fifteen wolf packs in Wyoming, even though FWS had previously approved the language in WYO. STAT. ANN. § 23-1-304 with respect to the Department's management of fifteen wolf packs in Wyoming and seven wolf packs located in Wyoming outside of the National Parks.

136. The Defendants also claim to have rejected the Wyoming Plan because it permitted the gray wolf to be classified as a "predatory animal" in certain circumstances. Yet, the Defendants will allow Wyoming to manage wolves as a *de facto* "predatory animal" as long as the Wyoming Legislature capitulates and gives wolves some label other than "predatory animal."

137. The Defendants will not propose a rule to delist the gray wolf until Wyoming makes the required changes to its statutes and the Wyoming Plan.

138. The Defendants' decision to reject the Wyoming Plan is a final agency action subject to judicial review under the APA.

139. By rejecting the Wyoming plan based upon considerations other than the best scientific and commercial data available, the Defendants have acted arbitrarily, capriciously, and not in accordance with law within the meaning of 5 U.S.C. § 706(2).

140. By rejecting the Wyoming Plan based upon an alleged ambiguity in the language of WYO. STAT. ANN. § 23-1-304 after previously approving the language regarding the Department's management authority over gray wolves, the Defendants have acted arbitrarily, capriciously, and not in accordance with law within the meaning of 5 U.S.C. § 706(2).

141. By rejecting the Wyoming Plan because of the "predatory animal" classification, the Defendants have acted arbitrarily, capriciously, and not in accordance with law within the meaning of 5 U.S.C. § 706(2). Wyoming is entitled to an injunction ordering the Defendants to immediately approve the Wyoming Plan and to proceed forthwith to propose a rule to delist the gray wolf in the Western Distinct Population Segment.

FOURTH CAUSE OF ACTION

Injunctive Relief Pursuant to the Constitution

142. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 - 141 as if fully set forth herein.

143. Congress enacted the ESA pursuant to its limited authority under the Commerce Clause of the United States Constitution. U.S. CONST., Art. I § 8. That limited authority gives way to the sovereignty of a State as prescribed in the Tenth Amendment to the Constitution and in the Guarantee Clause of Article IV of the Constitution. The Commerce Clause does not

confer upon Congress the authority to compel a state to enact and enforce a federal regulatory program.

144. The Tenth Amendment reserves for the states all powers “not delegated to the United States,” U.S. CONST., Amend. 10, and the Constitution’s Guarantee Clause directs the United States to “guarantee to every State in this Union a Republican Form of Government.” U.S. CONST., Art. IV, § 4.

145. The Tenth Amendment, together with the federal structure prescribed by the Constitution, confers upon the states a level of sovereignty that prevents Congress from directing a state to govern according to Congressional mandate.

146. The Guarantee Clause of Article IV guarantees that state legislatures retain their authority and accountability to the public and prevents Congress from interfering with this relationship by specifying the sort of legislation that a state legislature must pass.

147. As construed and implemented by FWS, the ESA would intrude upon Wyoming’s sovereignty in violation of the Tenth Amendment and the Guarantee Clause. FWS’s interpretation would commandeer the Wyoming Legislature effectively forcing that body to govern according to detailed strictures emanating from FWS’s interpretation of its regulations and the ESA.

148. The ESA permits FWS to protect “endangered” or “threatened” species and to “monitor” a recovered species. The statute does not confer authority upon FWS to mandate legislation for a particular state. Nor does the statute permit FWS the authority to threaten to

withhold delisting in order to coerce Wyoming into accepting FWS's instruction as to how to regulate a delisted species.

149. The wolf population exceeds the levels FWS has determined to be necessary for delisting. Nonetheless, FWS insists that it will not proceed with delisting the gray wolf unless the Wyoming Legislature enacts a statute that conforms to FWS's specific edicts regarding designation of the wolf within the State of Wyoming.

150. FWS has offered Wyoming a choice between two coercive alternatives: either (i) the gray wolf will remain "protected" under the ESA and Wyoming will thereby lose its authority to manage the species in a way that limits harmful impacts on livestock and wild game and permits control of the wolf population consistent with Wyoming's management of other species; or (ii) Wyoming succumbs to FWS's mandate that the Legislature enact a statute of FWS's choosing.

151. Under FWS's interpretation, the ESA would commandeer the Wyoming Legislature into federal regulatory service. Thus, the interpretation would work an unconstitutional application of the ESA on Wyoming.

152. The FWS's unlawful rejection of Wyoming's wolf management plan severely compromises Wyoming's sovereignty by affecting the Commission's ability to raise sufficient revenue to manage the wildlife resources in the state and far exceeds any authority the FWS has been granted pursuant to the Commerce Clause.

153. This Court should enter a declaratory judgment that the Constitution prohibits FWS from imposing its will upon the Wyoming Legislature and declare that the FWS's mandate is unconstitutional.

154. In conformity with a constitutional interpretation of the regulations and the statute, Wyoming is entitled to an injunction prohibiting FWS from imposing its mandate upon the Wyoming Legislature and enjoining FWS from any further delay in delisting the gray wolf.

FIFTH CAUSE OF ACTION

Declaratory Judgment

155. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-154 as if fully set forth herein.

156. In accordance with 28 U.S.C. §§ 2201-2202, a reviewing court may declare rights and other legal relations of any interested party seeking declaratory relief, regardless of whether or not further relief is or could be sought. A reviewing court also may grant further necessary and proper relief based upon a declaratory judgment or decree.

157. Plaintiff Wyoming is entitled to a declaration that the Defendants have unreasonably delayed or unlawfully withheld agency action by rejecting the Wyoming Plan in violation of the APA and by refusing to propose a rule to delist the gray wolf.

158. Plaintiff Wyoming is entitled to a declaration that the Defendants have unlawfully withheld or unreasonably delayed agency action by failing to properly manage the gray wolf population in Wyoming.

159. Plaintiff Wyoming is entitled to a declaration that the Defendants have acted arbitrarily, capriciously, and not in accordance with law by rejecting the Wyoming Plan based upon considerations other than the best scientific and commercial data available.

160. Plaintiff Wyoming is entitled to a declaration that the Defendants have acted arbitrarily, capriciously, and not in accordance with law by rejecting the Wyoming Plan based upon an alleged ambiguity in the language of WYO. STAT. § 23-1-304 after previously approving the language regarding the Department's management authority over gray wolves.

161. Plaintiff Wyoming is entitled to a declaration that the Defendants have acted arbitrarily, capriciously, and not in accordance with law by rejecting the Wyoming Plan because of the "predatory animal" classification.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Wyoming prays for this Court to enter judgment in its favor and against Defendants as follows:

1. Pursuant to 28 U.S.C. § 2201, declare that the Defendants have unlawfully withheld or unreasonably delayed agency action by basing the decision to reject the Wyoming Plan on considerations other than the best scientific and commercial data available and by failing to properly manage the gray wolf population in Wyoming in accordance with 50 C.F.R. § 17.84(i) and its prior commitments;

2. Pursuant to 28 U.S.C. § 2201, declare that the Defendants have acted arbitrarily,

capriciously, and not in accordance with law by rejecting the Wyoming Plan based upon an alleged ambiguity in the language of WYO. STAT. § 23-1-304 after expressly approving the language and by rejecting the Wyoming Plan because of the “predatory animal” classification;

3. Pursuant to 28 U.S.C. § 2201, declare that the Constitution prohibits FWS from imposing its will upon the Wyoming Legislature and declare that the FWS’s mandate is unconstitutional and in excess of any authority granted to the federal government pursuant to the Commerce Clause;

4. Issue an injunction prohibiting FWS from imposing its mandate upon the Wyoming Legislature and enjoining FWS from any further delay in delisting the gray wolf;

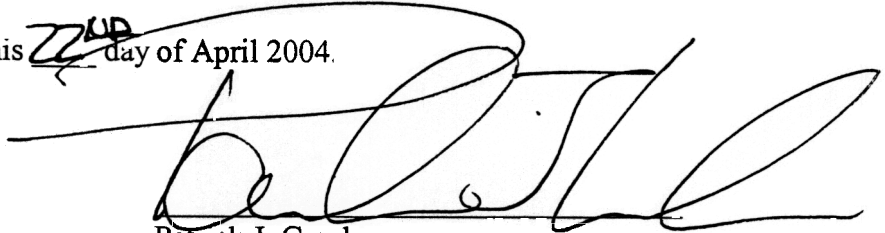
5. Pursuant to 5 U.S.C. § 706(1), 5 U.S.C. § 706(2), and 28 U.S.C. § 2202, issue an injunction ordering the Defendants to immediately approve the Wyoming Plan and to proceed to propose a rule to delist the gray wolf in the Western Distinct Population Segment;

6. Pursuant to 5 U.S.C. § 706(1) and 28 U.S.C. § 2202, issue an injunction ordering the Defendants to control wolf depredation of livestock and wildlife in Wyoming in accordance with the requirements of 50 C.F.R. § 17.84(i) until such time as the Department assumes management authority over gray wolves in Wyoming;

7. Pursuant to 28 U.S.C. § 2412, award the State of Wyoming its attorneys fees and costs incurred in bringing this action; and

8. Award such other relief as the Court may find just and appropriate.

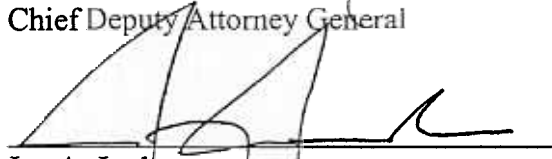
Respectfully submitted this ~~22nd~~ day of April 2004.



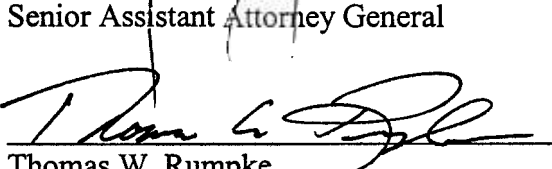
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